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No. 85-1513

IN THE
# Supreme Court of the United States
OCTOBER TERM, 1986

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EDWIN W. EDWARDS, *et al.*,
*Appellants,*
v.
DON AGUILLARD, *et al.*,
*Appellees.*

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**On Appeal from the United States Court of Appeals for the Fifth Circuit**

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## BRIEF *AMICI CURIAE* OF THE AMERICAN ASSOCIATION OF UNIVERSITY PROFESSORS AND THE AMERICAN COUNCIL ON EDUCATION IN SUPPORT OF APPELLEES

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This brief *amici curiae* is filed on behalf of the American Association of University Professors and the American Council on Education in support of appellees. Blanket letters of consent from all parties are on file with the clerk.

### INTEREST OF *AMICI CURIAE*

The American Association of University Professors (hereinafter "AAUP" or the "Association") is a national

membership organization of 50,000 faculty members and research scholars in all the academic disciplines.[1] Founded in 1915, it is the nation's oldest and largest body dedicated to the advancement of higher education from the perspective of faculty concerns. AAUP stands in the forefront in the protection of academic freedom in the United States, and participates from time to time in this Court as amicus in cases addressing matters of academic freedom and professional standards.[2]

In 1981, the Association's plenary Annual Meeting adopted a resolution condemning "creation-science" legislation as antithetical to principles of academic freedom:

> The Sixty-seventh Annual Meeting of the American Association of University Professors declares its firm opposition to legislation, recently adopted by the State of Arkansas and pending before other state legislatures, that requires "balanced treatment" of "creation science" and evolution in public schools. This legislation, by requiring that a religious doctrine (sometimes disguised) be taught as a condition for the teaching of science, serves to impair the soundness of scientific education preparatory for college study and to violate the academic freedom of public school teachers.
>
> The potential consequences of this legislation for higher education science curricula are of particular concern to this Meeting. Faculty members who educate public school teachers would presumably have to be trained in "creation science" so that they can

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[1] We note with regret the death on July 18 of AAUP General Counsel Robert M. Cover (Law, Yale University) who made substantial contributions to this brief. His work was continued by Professor Edward F. Sherman (Law, University of Texas), who was subsequently appointed to the position.

[2] *E.g., Regents of the University of Michigan v. Ewing*, 106 S. Ct. 507 (1985); *Minnesota State Bd. for Community Colleges v. Knight*, 104 S. Ct. 1058 (1984); *Givhan v. Western Line Consol. School Dist.*, 439 U.S. 410 (1979).

> educate their students accordingly. Members of college and university faculties in Arkansas and elsewhere should be able to teach and criticize freely in accord with professional standards. "Creation science" legislation would impose an unacceptable limitation upon the faculty member's ability to carry out these obligations.
>
> The Sixty-seventh Annual Meeting of the American Association of University Professors calls on state governments to reject "creation science" legislation as utterly inconsistent with the principles of academic freedom.

Reprinted in *Creationism and the Classroom*, 68 Academe: Bull. of AAUP 7 (March-April 1982). In 1981, then AAUP President Professor Henry T. Yost (Biology, Amherst College) presented testimony to the Louisiana Legislature in opposition to the proposed "Balanced Treatment for Creation-Science and Evolution-Science Act." Yost described the pending bill as inimical to principles of academic freedom. AAUP is especially concerned about the statute's direct and indirect impacts on higher education, and on its seriously flawed evocation of fundamental principles of academic freedom.

The American Council on Education ("ACE") was founded in 1918 and includes in its membership over 1400 colleges and universities and 145 higher education organizations across the United States. ACE attempts to promote and preserve the interests of all who compose the academic community—students, faculty, and administrators. It shares with AAUP a commitment to the protection of academic freedom and institutional autonomy in higher education, values threatened by the statute under scrutiny in this case. The two organizations also have a direct interest in the primary and secondary education of students in preparation for advanced learning, and they share a concern that the statute ill serves student and broader societal needs.

## STATEMENT OF THE CASE

This case presents a challenge to the facial constitutionality of Louisiana's "Balanced Treatment for Creation-Science and Evolution-Science Art," La. Rev. Stat. § 17:286.1 (hereinafter "Balanced Treatment Act"). The Act, passed in 1981, requires that any teaching of "evolution" in the state's public primary and secondary schools must be "balanced" by attention to "creation-science." "Creation-science" is defined tautologically as "the scientific evidences for creation and inferences from those scientific evidences." § 286.3(2). The statute is couched in both permissive and mandatory terms. Evolution need not be taught, but if it is, "creation-science" must also be presented. "Balanced treatment" is defind as whatever information the classroom teacher considers necessary and appropriate for presenting both concepts. The stated purpose of the statute is the protection of academic freedom.

While most of the statute is directed to primary and secondary schools, the "nondiscrimination" provision has an immediate impact on public colleges and universities in Louisiana:

> Sec. 286.4(C). No teacher in public elementary or secondary school or instructor in any state-supported university in Louisiana, who chooses to be a creation-scientist or to teach scientific data which points to creationism shall, for that reason, be discriminated against in any way by any school board, college board, or administrator.

Enforcement mechanisms for the statute are unstated.

A group of plaintiffs including parents, teachers, a school board, and the Louisiana Board of Elementary and Secondary Education challenged the constitutionality of the statute under the Establishment clause of the First Amendment. The district court granted summary judgment in favor of the plaintiffs in an unreported decision,

affirmed by the court of appeals. *Aguillard v. Edwards*, 765 F.2d 1251 (5th Cir. 1985). The court of appeals denied review *en banc*, with seven members of the court dissenting. 778 F.2d 225 (1985).

## SUMMARY OF ARGUMENT

Amici AAUP and ACE confine this brief to consideration of the stated legislative purpose of the Balanced Treatment Act—the protection of academic freedom—which we examine from several vantage points.

In Parts I and II amici AAUP and ACE demonstrate that the Balanced Treatment Act violates rather than promotes academic freedom under the term's plain meaning as understood in higher education. Part I examines the nondiscrimination section, 286.4(C), which expressly constrains Louisiana's public colleges and universities in their selection and reappointment of faculty members. This intrusive provision establishes a litmus test for faculty suitability very similar to other legislative incursions into faculty appointment, such as loyalty oaths, which the Court has found unconstitutional. E.g., *Keyishian v. Board of Regents*, 385 U.S. 589 (1967); *Shelton v. Tucker*, 364 U.S. 479 (1960); and *Sweezy v. New Hampshire*, 354 U.S. 234 (1957). The nondiscrimination section improperly invades the autonomy of institutions of higher learning to determine for themselves on professional grounds who may teach on their campuses, an essential prerequisite for preserving academic freedom.

In Part II we consider the impact of the Act in declaring "creation-science" to be scientific, usurping the traditional function of the community of scholars, in the exercise of their academic freedom, to determine what is or is not authentic to their disciplines. The judgment that a particular body of thought is "scientific" is not for the state to make, if academic freedom is to be preserved. Moreover, the Louisiana legislature's presumptive dec-

laration of the scientific merit of "creation-science" not only has ramifications for the institution with respect to faculty selection, as discussed in Part I, but also has inevitable consequences for the content of the university curriculum. The impact on higher education curriculum arises from the role of Louisiana colleges and universities in educating future primary and secondary school teachers, who must be trained in "creation-science" so that they can provide "balanced treatment" to the subject in their own classes. The statute thus would force Louisiana's public colleges and universities to accord scientific legitimacy to a doctrine, the merit of which is established by legislative fiat rather than by scholarly discussion and consensus which are central to academic freedom.

The concluding section, Part III, takes as its starting point the state's assertion that, in the primary and secondary schools, the statute is designed to assure that students are exposed to diverse information about the origins of life. Without attaching the term "academic freedom" to this objective, we demonstrate that, however labelled, the statute would reduce rather than enhance opportunities for exposing students in the primary and secondary schools to different theories concerning the origins of life.

Given the facial illegitimacy of the stated statutory purpose, the lower courts correctly concluded on summary judgment that the Balanced Treatment Act advances no secular objective but instead masks, thinly, a religious purpose in violation of the Establishment Clause of the First Amendment.

## ARGUMENT

### I. THE NONDISCRIMINATION SECTION'S INTRUSION INTO MATTERS OF FACULTY APPOINTMENT AND RETENTION IN HIGHER EDUCATION VIOLATES, RATHER THAN PROMOTES, ACADEMIC FREEDOM.

The nondiscrimination provision of the Balanced Treatment Act, section 284.4(c), directly affects faculty hiring and retention in public colleges and universities in Louisiana. The section provides that no teacher

> in any state-supported university in Louisiana, who chooses to be a creation-scientist or to teach scientific data which points to creationism shall, for that reason, be discriminated against in any way.

The effect of the nondiscrimination section is to accord "creation-science" special recognition in Louisiana's public colleges and universities in matters of faculty appointment, retention, promotion, and tenure. Under the statute, a candidate for appointment, say, to the biology department at Louisiana State University with credentials as a "creation-scientist" would have to receive serious consideration for the position, regardless of the department's assessment of the scientific merit of creationism or its contribution to the curriculum. The candidate could not be rejected because the department rejects the doctrine of "creation-science." Similarly, personnel decisions involving a "creation-scientist" (such as promotion, salary increases, rehiring, and tenure) would have to be made in derogation of any adverse academic judgment as to the merits of creationism.

The freedom to decide, on academic grounds, who shall teach is an elemental component of academic freedom.[3]

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[3] Amici AAUP and ACE observe that the State of Louisiana has attached a narrow and quite specific meaning in this case to the term "academic freedom." The State paraphrases the statutory purpose of the Balanced Treatment Act of "protecting academic freedom," appearing in section 286.2, as the purpose "of protecting

*Sweezy v. New Hampshire*, 354 U.S. 234 (1957). A decision about a candidate for appointment or retention occasionally presents difficult questions of what constitutes scholarly work worth doing, of what approaches in the subject matter are likely to be productive, even of deep presuppositions about the nature of the discipline. *See generally* Report, *Some Observations on Ideology, Competence and Faculty Selection*, 72 Academe: Bull. of AAUP 1a (1986). But it is the judgment of the disciplinary body to make, even if, with hindsight, it could be said to have erred:

> A rejected area of study, or a rejected approach to the subject, may later turn out to be highly productive and valuable. Again, the department may have deprived itself of people whose presence would have enriched teaching and intramural discourse even if their work never becomes significant for the discipline as a whole. But there is no wider ground on which good-faith judgments of these kinds may be criticized. Their having been satisfactorily made lies wholly in their having been wisely made. . . .

*Id.* at 2a.[4]

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students' academic freedom to hear additional scientific information." Brief of Appellants at 5, 36, 42, 46. A central component of the concept of academic freedom as the term is conventionally used is freedom of inquiry in the classroom. It embraces the instructor's freedom to teach and the student's freedom to learn, as well as rights of free expression for both. The specific definition used by the State here, however, implies that, to the extent that students have a *right to receive* information, instructors have a corollary *obligation to present* that information. If carried to its extreme, the imposition of such an obligation on an instructor would infringe the instructor's freedom in teaching. Accordingly, we urge caution on the Court in its resolution of this case in addressing the term "academic freedom" as the State has used it here. *Cf. Board of Education v. Pico*, 457 U.S. 853, 878 (1982) (Blackmun, J. concurring).

[4] In legal education, for example, there has been considerable controversy surrounding the usefulness of the work done by ad-

In the instant case, the legislature has usurped the faculty's freedom to define what explanatory models have scholarly merit; it has "ideologized" the appointment process. Metzger, *Comment on Creation and Academic Freedom*, 68 Academe: Bull. of AAUP 12 (1982).

To tolerate the nondiscrimination section's broad legislative interference with faculty appointment and retention would be to disregard well-established principles of this Court. Loyalty oaths, for example, have long been disfavored as indicia of the fitness of candidates for faculty appointment and retention. *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) presented a challenge to New York's teacher loyalty laws, requiring oaths from faculty members of the State University of New York. In invalidating the provisions, the Court cited the nation's deep commitment to safeguarding academic freedom, a "special concern of the First Amendment." Our constitutional system does not tolerate loyalty oaths or other "laws that cast a pall of orthodoxy over the classroom." *Id.* In *Whitehill v. Elkins*, 389 U.S. 54 (1967), the Court found unconstitutional a state loyalty oath required of faculty at the University of Maryland, indicating that "[t]he continuing surveillance which this type of law places on teachers is hostile to academic freedom." *Id.* at 59-60.

This Court has rejected other ideological tests imposed by legislatures on faculty. In *Sweezy v. New Hampshire*,

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herents of the "critical legal studies" movement. Relevant to the above is an observation of AAUP's Committee A on Academic Freedom, *Response to an Inquiry by Professor Paul Brest, in* Report to Committee A on Academic Freedom and Tenure, 1985-86, 72 Academe: Bull. of AAUP #5 (Sept.-Oct. 1986) (forthcoming):

> Whether it ["critical legal studies"] offers some promising new approach as it may, or whether it merely revives a certain simplism that reflects mediocre minds, or highly capable minds nonetheless clouded by an overriding emotional attachment of some sort, remains a matter of professional judgment in the first instance that faculties must try to assess as best they can in wielding primary responsibility for curriculum and staffing.

354 U.S. 234 (1957), the Court protected a faculty member from questions posed by the state attorney general, acting as a one-man legislative committee, concerning the content of a university lecture. Calling the freedom of universities essential in a democracy, the plurality opinion observed that imposition of any "strait jacket" on the intellectual leaders in higher education would do not less than "imperil the future of our Nation." 354 U.S. at 250. Justice Frankfurter's concurring opinion cited freedom in faculty appointments ("who may teach") as first among the "four essential freedoms" of a university. At 263. A statutory requirement that prospective teachers disclose all organizations to which they have belonged over the past five years was found to be an invasion of teachers' rights in *Shelton v. Tucker*, 364 U.S. 479 (1960). While the Court found worthwhile the goal of conducting fitness inquiries on prospective teachers, it deemed the broad affirmative obligation of disclosure to be excessively instrusive.

Enforcement of the Louisiana nondiscrimination clause would work an evil similar to that raised in these cases. In order to prepare their students to teach in public schools, Louisiana colleges and universities would have to either force existing faculty to teach as science what most consider to be unscientific, or hire new faculty members who qualify as "scientific creationists." The consequence would be to create an ideological litmus test for some faculty appointments based on candidates' adherence to a theory that the department as a whole may have concluded, in the best exercise of its professional judgment, is unscientific. The Act seems to militate in this direction, suggesting the creation of enclaves of "creation-scientists" within such departments as biology, physics, chemistry, history, sociology, psychology, and world civilization who will teach as science what the overwhelming consensus of their discipline considers to be essentially religion.

The actions and motives of faculty members considering candidates for appointment, promotion, and tenure could be subjected to detailed scrutiny to assess whether the rejection of a "creation-scientist" was motivated by discrimination against the doctrine. This would involve the courts in monitoring academic decisions to ensure compliance with a standard that is generally rejected by the scientific community.[5] This interferes with institutional autonomy to no less a degree than do the loyalty oaths and other ideological litmus tests found unconstitutional by this Court.

It is a violation of academic freedom for a legislature to adopt an ideological test that precludes consideration of scholars who are otherwise qualified on academic grounds. *Keyishian v. Board of Regents, supra.* So, too, does it violate academic freedom to adopt an ideological litmus test that insulates an incumbent or a candidate from disqualification on purely academic grounds. Thus the nondiscrimination provision infringes academic freedom rather than promoting it as the statute on its face suggests.

## II. THE LEGISLATIVE USURPATION OF THE ACADEMIC DETERMINATION OF WHAT IS SCIENCE VIOLATES, RATHER THAN PROMOTES, ACADEMIC FREEDOM.

The Balanced Treatment Act defines "creation-science" as the scientific evidence for creation, section 286.3(1), and in adopting this definition the legislature clearly implies that some such scientific evidence exists. Indeed,

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[5] The National Academy of Sciences has stated unequivocally "that the tenets of 'creation-science' are not supported by scientific evidence." *Science and Creationism: A View from the National Academy of Sciences* (1984). The Board of the American Association for the Advancement of Science indicted creationist mandates as "a real and present threat to the integrity of education and the teaching of science." R. O'Neil, *Creationism, Curriculum, and the Constitution.* 68 Academe: Bull. of AAUP 21 (March-April 1982).

the State has sought to defend the measure by asserting that "creation-science" *is* science; and, by reliance upon both published material and the affidavits of persons with academic credentials, the State claims the lower courts erred in denying it a trial on the merits. Brief of Appellant, at 6-21. Inherent in the State's claim is the assumed prerogative of the legislature to single out a particular doctrine as worthy of acceptance on a scientific basis, and to command that it be treated as such, when the overwhelming opinion of the scientific community is that the doctrine is not science at all. The legislative usurpation of the academic prerogative to determine what constitutes science infringes protected academic freedom interests.

The Constitution does not require the state to operate institutions of higher education; neither does it constrain the state in deciding whether to offer instruction in broadly defined areas such as law, veterinary medicine, agriculture, or physics, or to create institutes or centers for the study of particular and even narrowly defined areas such as black studies or fusion energy. But once the state decides to do so, the First Amendment requires it to afford academic freedom for those institutions and the faculties housed within them.

This Court has identified the protection of academic freedom with the individual teacher's freedom to teach, research, and publish under the First Amendment. *Sweezy v. New Hampshire*, 354 U.S. 234 (1957); *Keyishian v. Board of Regents*, 385 U.S. 589 (1967). But there is another sense in which the Court has employed the term, drawing upon an even older wellspring, referring to the autonomy of the institutions themselves and of the disciplinary groups within them. *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978) (opinion of Powell, J.). *See generally* R. Hofstadter & W. Metzger, *The Development of Academic Freedom in the United States*, Ch. 2 (1955). M. Finkin, *On "Institutional" Academic Freedom*, 61 Texas L. Rev. 817 (1983).

The Court recently noted that "[a]cademic freedom thrives . . . on autonomous decision making by the academy itself" in these essential areas. *Regents of the University of Michigan v. Ewing*, 88 L.Ed.2d 523, n.12 at 533 (1985). It was in this sense that Justice Frankfurter spoke in his concurrence in *Sweezy v. New Hampshire*, *supra*. Progress in the natural and social sciences, he observed, is born of academic hypothesis and speculation. *Id.* at 262. "This means," he argued, "the exclusion of governmental intervention in the intellectual life of a university." *Id.*

This freedom from governmental intervention must extend to the right of a disciplinary group housed within the academy to decide, on academic grounds, what is and what is not authentic to the discipline. This was put forcefully over sixty years ago in the Report of AAUP's Committee M, *On Freedom of Teaching in Science*, 11 AAUP Bull. 93, 94 (1925), dealing with legislative efforts to ban the teaching of evolution:

> [T]he decision as to what is taught as true, or what should be presented as theory in science, or in any other field of learning, should be determined not by a popular vote nor by the activities of minorities who are persuaded that certain doctrines are inconsistent with their beliefs, but by the teachers and investigators in their respective fields.

The reason for this deference to the academic judgment goes to the heart of free academic inquriy:

> We are never absolutely certain as to what constitutes truth, but if there is any method of insuring that what is taught is true better than that of giving investigators and teachers the utmost freedom to discover and proclaim the truth as they see it, that method has never been discovered. If those who know most about a subject sometimes decide wrongly, matters are not likely to be mended by putting the decision into the hands of those who know less. *Id.*, at 94.

It is fundamental to the progress of science that scientists determine what is scientific and what is not. Legislative fiat is not an acceptable substitute. One commentator has observed that the legislature, a political rather than an educational body, can no more legislate the relevance of Nietzsche to philosophy than it can repeal (or enact) the First Law of Thermodynamics.[6] Science and its boundaries must be defined by the collaborative and competitive work of minds devoted to its study[7] rather than by the preemptive exercise of the power of the state. A theory gains acceptance in science not through the power of its adherents to persuade a legislature, but through its intrinsic ability to persuade the discipline at large. Whence the infirmity in the instant law: "it treats with official finality what is in essence tentative and probationary . . . [it] decides by the conclusive use of power that which should be subject to rational tests of truth." Metzger, *Comment on Creation and Academic Freedom*, 68 Academe: Bull. of AAUP 12 (1982).

To be sure, the State has not elevated "creation-science" to the level of an official and exclusive state policy, but rather claims in the name of academic freedom the more modest and superficially appealing right merely to require "balanced treatment" of it. In doing so, however, the

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[6] M. Finkin, *Creationism and Academic Freedom: A Reply*, 68 Academe: Bull. of AAUP 10, 11 (March-April 1982).

[7] The fact that several individuals with academic credentials support "creation-science" as scientific does not diminish the academic freedom violation arising from the legislative fiat. Nazi Germany endeavored to supplant "Jewish physics," meaning relativity theory and quantum mechanics, with "Aryan physics," meaning the unverifiable theory of meta-aether. The foremost proponents of Aryan physics, Phillipp Lenard and Johannes Stark, were holders of the Nobel prize. *See generally* A. Beyerchen, *Scientists Under Hitler: Politics and the Physics Community in the Third Reich* (1977). Even a theory of astrology is not wholly wanting in academic support. M. Gaugelin, *The Scientific Basis of Astrology* (J. Hughes trans. 1970).

State effectively declares the doctrine to be worthy of attention in science. Yet a legislature has no competence to decide what should be presented as theory in science, and when it does so it has infringed upon academic freedom at its most fundamental level.

The State maintains that the Act is only seeking balance. But by mandating "creation-science" as one of only two acceptable "scientific" explanations of the origins of life, it puts a state imprimatur on it as an alternative explanation to that generally accepted in the scientific community. It also creates a false dichotomy, forcing the teacher to view the explanation of life as either evolution or creation. Such an approach opens up endless possibilities for a legislature to impose its views on academic freedom under the claim of providing balance. Suppose, for example, that after the Virginia anti-miscegenation statute was declared unconstitutional in 1967, the legislature had mandated that if that case were taught in history and government classes, anti-miscegenation must be given equal treatment as a socially legitimate and legally correct doctrine. Presentation of differing viewpoints, of course, is an important part of the proper academic environment, and academic freedom would protect a teacher's right to express other points of view, whether it be to evolution or miscegenation. But mandating that a religious or ideological position must be taught as acceptable science, or as socially legitimate or legally correct, irrespective of the academic judgment made by the professor and the profession, is inconsistent with the professional and institutional autonomy that is the essence of academic freedom.

The statement by the Act's sponsor, quoted in the State's brief (Brief of Appellant at 41-2) that the Act promotes academic freedom by insuring that the student will not "only receive one model of indoctrination on origins" indicates a basic lack of understanding of academic freedom. The objective of the school and uni-

versity is not to indoctrinate but to explore ideas with an open mind and an impartial and scientific approach. Requiring indoctrination in a doctrine mandated by statute, rather than by the best academic judgment, in an attempt to rebut generally accepted scientific theories is not academic freedom. The significance of evolution, creationism, or any other approach to the origin of life must derive from its inherent plausibility on the basis of scientific judgment and not merely by legislative certification. The Act, by defining what is science and mandating its teaching, is thus contrary to the principles of academic freedom which on its face the statute purports to advance.

## III. THE RIGIDITY AND ILLOGIC OF THE "BALANCED TREATMENT" CURRICULUM PROVISIONS BELIE ANY SECULAR LEGISLATIVE PURPOSE OF EXPOSING PRIMARY AND SECONDARY STUDENTS TO VARIED POINTS OF VIEW.

The State argues that the curricular "balanced treatment" requirements were designed to accord primary and secondary students the right "to hear additional scientific evidence" on the origins of life. Brief of Appellants at 32-50. Yet the narrow means employed in the statute limit rather than broaden the range of information to which these students may be exposed.

Amici AAUP and ACE support the general proposition that it is a laudable legislative goal to provide citizens with a wide range of information on different sides of issues, especially on current matters of public controversy. In preparing students for full participation in society, schools do well to assure that they are exposed to diverse opinions and perspectives. *Ambach v. Norwick*, 441 U.S. 68 (1979). However, the Act, by singling out only "creation-science" as an alternative to "evolution," and by mandating a restrictive "balanced treatment"

formula, reduces the opportunities for presentation and assessment of diverse information.

A "balanced treatment" restriction is inherently confining. Without such a requirement students and teachers are free to explore questions and issues to whatever lengths interest them within the legitimate constraints imposed by the schools. The Act does not define what portion of the school curriculum should be devoted to "creation-science" in order that its treatment be "balanced" with the teaching of evolution. Yet the teacher cannot forego sustained attention to "creation-science," for, given the prominence of evolution in school science courses, marginal or limited attention given to "creation-science" would scarcely be "balanced." Hence, the "balanced treatment" of "creation-science" must reduce the amount of time devoted to teaching evolution, and the flexibility enjoyed by Louisiana schools previous to passage of the Balanced Treatment Act to allocate class-time among particular subjects in science courses is correspondingly diminished.

The Act also imposes serious limitations on curricular subject-matter. The State's insistence that "balanced treatment" be accorded "creation-science" necessarily implies that "creation-science" has worth as a scientific theory. The State's claim that it is promoting diversity in the schools in mandating the "balanced treatment" of "creation-science" is essentially self-contradictory. Students in Louisiana schools will be "free" to learn about "creation-science," but their teachers plainly cannot speak their minds about it if their views on "creation-science" differ from the ones they hold on "evolution." [8] The dis-

[8] Even beyond the Establishment Clause issues at stake in the instant appeal, we note the statute's additional deficiency of infringing the associational rights of teachers. Their associational freedoms under the First Amendment may be violated by the requirement that they provide instruction in doctrines which they, together with the responsible academic community, consider to be

sent in the court of appeals *en banc* erroneously characterized the statute as requiring that "the whole truth" be taught. 778 F.2d at 226. The reality is to the contrary; the Balanced Treatment Act does not extend but instead diminishes thought and discussion in the classroom, restricting students' access to factual information and the interpretation of information.

## CONCLUSION

For the foregoing reasons, the judgment of the court below should be affirmed.

Respectfully submitted,

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wholly antithetical to responsible scholarship. See *Epperson v. Arkansas*, 393 U.S. 97, 116 (1968) (Stewart, J., concurring). O'Neil, *Creationism, Curriculum, and the Constitution*, 68 Academe: Bull of AAUP 21, 24-26 (1982).